

ROMANIA

TRADE SUMMARY

The United States registered a trade deficit of \$258 million with Romania in 1999, compared to a deficit of \$54 million in 1998. Romania was the United States' 95th largest export market in 1999. U.S. exports to Romania were \$177 million, nearly a 48 percent decrease from 1998. U.S. imports from Romania were \$434 million in 1999, an increase of \$41 million (10.5 percent) from 1998. The stock of U.S. foreign direct investment in 1998 was \$128 million, a 43.8 percent increase from 1997.

IMPORT POLICIES

Romania has dramatically improved its import policies in the last 10 years. It has ended the state's monopoly on trade, became a founding member of the World Trade Organization (WTO), bound all of its tariff lines in the Uruguay Round, and updated its customs code. Romania joined the WTO's Information Technology Agreement and so eliminated tariffs on the products covered by that agreement effective January 1, 2000. The past decade has also seen Romania conclude a number of preferential trade agreements, including its Association Agreement with the EU and free trade agreements with the European Free Trade Area (EFTA) countries and the Central European Free Trade Agreement (CEFTA) countries. In December 1999, the European Union (EU) announced its intention to begin accession negotiations with Romania in early 2000.

Romania still maintains high average bound most-favored-nation (MFN) rates for agricultural products (134 percent) and non-agricultural products (35 percent), based on 1999 data. It did, however, use much lower average applied rates, 33.9 percent in the case of agricultural products and 16.2 percent in the case of non-agricultural products. High MFN rates on distilled spirits (90 percent *ad valorem*

within a modest quota and 247.5 percent outside the quota), wine (144 percent), and textiles (12-32 percent) have severely limited access to the Romanian market for U.S. exporters. Since October 1998, Romania has imposed an import surcharge affecting around 60 percent of imports, which will expire at the end of the year 2000; the initial rate of six percent was reduced to four percent in 1999.

As Romania completes the implementation of its preferential trade agreements with the EU and CEFTA countries, U.S. exporters will frequently encounter large tariff differentials particularly with respect to industrial products. U.S. exporters will have to pay relatively high MFN rates, while EU and CEFTA exporters will often not have to pay any duties or preferential rates. A number of U.S. companies already have voiced concerns about these tariff differentials; their products include wine, supplemental methionine for animal feeds, rubber tires, upholstery, lightning arresters, switching gear for telephone lines, and washers and dryers for laundromats. The differential between the MFN rate to which U.S. products entering Romania are subject compared to the duty-free or preferential rates EU exporters receive is significant in each of these categories and hinders U.S. exporters' ability to compete in the Romania market. When Romania does join the EU, which will take many years at a minimum, it will have to adopt the EU's common external tariff (CXT) rates, which currently are significantly below Romania's applied rates.

In 1997, Romania adopted a new Customs Code, and the government established minimum and maximum prices for imported meat, eggs, rice, sugar, fruits and vegetables, clothing, and footwear. It also established minimum and maximum reference prices for distilled spirits. Further, Romania instituted specific procedures for investigating import prices when the c.i.f. value falls below the minimum import price. In such situations, the importer is required to pay, in addition to the duty based on the c.i.f. value, a "guarantee" deposit that is the difference

ROMANIA

between the duties of the maximum established price and that of the c.i.f. value. This “guarantee” allows for the release of the goods while customs officials verify the accuracy of the c.i.f. value within the allotted thirty days. However, U.S. firms report that the “guarantees” are reimbursed much later or not at all, even after investigations were successfully concluded in favor of the importers.

Additionally, the verification procedures utilized by Romanian customs officials include several unnecessary requirements, which also are of concern to U.S. businesses. For instance, to verify the actual c.i.f. value of a specific transaction, the Romanian “surveillance and control brigade” will make on-site inspections at the importer headquarters, warehouses where merchandise is stored and check “all the import-export operations made within [the] last five years.”

The above practices appear to contravene Romania’s obligations under the Customs Valuation Agreement and other WTO agreements, and present a significant trade barrier to the affected U.S. exporters. Therefore, the United States is considering requesting formal WTO consultations with Romania on this matter.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Romania has sought to bring its standards in line with international and EU standards. As of the end of 1998, there were over 16,000 national standards, of which 39 percent were identical to or equivalent to international standards, and a further nine percent were identical to or equivalent to EU standards. Romanian standards of quality and safety are under the jurisdiction of the Romanian Standards Institute. Nearly 90 percent of all new standards match ISO or EU standards. Romania adopted, for instance, international quality control standards such as ISO 8402, 9000-9004 and 9004-2 and

incorporated them in its national standardization system.

Although the ISO standards are not compulsory by law for individual companies, the buyers increasingly impose them on the suppliers to prove the quality of their products and services by the certification of the quality control system they practice. Generally speaking, U.S. quality standards requirements are superior to local ones. However, Western European countries are acting very aggressively to adapt local technical standards of their own and this might in time discriminate against U.S. products. According to Romanian Decree No. 21/1992, an Office for Consumer Protection has been created. This office supervises product quality compliance with compulsory standards referring to life, health protection, work security and environmental protection.

GOVERNMENT PROCUREMENT

Romania has expressed its intention to join the WTO Government Procurement Agreement (GPA). Romania already is an observer to the GPA, and it would have to become a signatory in order to join the EU. Romania’s current laws already comply with several essential GPA provisions. Romania has also supported discussions in Geneva regarding transparency in government procurement. Romania’s government procurement law covers purchases by central government bodies – Parliament, the Presidency, the government and ministries, institutions of higher learning, and the judiciary – as well as by state-owned enterprises, of goods and services, and public investment, with the exception of the procurement of armaments or public works by the Ministry of Defense; state-owned companies with the status of commercial companies have their own internally elaborated purchasing policies based on commercial principles. A national preference of 20 percent was introduced in 1995, but was eliminated in 1998. Article 5 of Romanian Decree OG12/1993, as modified, establishes the

ROMANIA

conditions for the participation of foreign suppliers: on condition that Romanian suppliers are granted similar treatment in the country of origin of the foreign supplier, certified as such by the Ministry of Industry and Commerce; and on the condition that a Romanian supplier is either not available or cannot fulfill the conditions of the purchase, duly substantiated by the purchasing entity on the tender document.

EXPORT SUBSIDIES

Generally, Romania only provides export subsidies for certain agricultural products. The government has periodically used a tax incentive to stimulate domestic production for export. According to Article 7(1)(b) of Romanian Law 73/1996, a reduction of 50 percent on the profits tax applied to the portion corresponding to the share of exports of goods and services in total sales as of January 1, 1997. The government removed the measure on 30 January 1998, but the measure was reinstated by parliament for 1999, and then suspended in March 1999.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Romania's criminal enforcement against copyright piracy and trademark counterfeiting (especially of U.S. distilled spirits) has been inadequate. Romania should provide its border and other authorities the legal authority and tools to combat the widespread piracy of copyrighted works. This inadequate enforcement against copyright piracy caused Romania to be placed on the Special 301 Watch List in 1999.

The rates of piracy in Romania are high. The International Intellectual Property Alliance (IIPA) has estimated that Romanian piracy of motion pictures, sound recordings, computer programs/software, and books cost U.S. industry \$43.3 million in 1998. However, the most severe effect has been with software. The Business Software Alliance (BSA) estimates that

the piracy rate in Romania has dropped only from 95 percent prior to the coming into force of the law to around 80 percent now. The Motion Picture Association estimates that it lost \$6 million in revenues in 1999 due to audiovisual piracy. The video piracy rate is approximately 50 percent, and many small cable companies and some private broadcast stations routinely transmit unauthorized U.S. films and programs. Romanian criminal courts have solved only 19 cases concerning copyright and related rights between the period from 1996 to 1999. Further, the deterrent effect of fines appears to be eroding due to high inflation.

In order to fully implement TRIPS obligations, the Ministry of Industries and Commerce has drafted a law amending Romanian Law 11/1999 concerning unfair competition, which deals with the protection of trade secrets. The draft has already been submitted to parliament for approval. Also, the government has drafted a new law to amend Romanian Law 129/1992 on the protection of industrial designs and patterns, but as of December 1999 had not submitted it to parliament. Further, as of December 1999, parliament had not acted on a bill on both industrial and intellectual rights (copyrights), which would provide border enforcement provisions in accordance with Romania's WTO TRIPS obligations.

SERVICES BARRIERS

In accordance with its Association Agreements with the EU, Romania was required to implement the EU broadcast directive which provides for European content quotas. However, Romania also included the "where practicable" provision of that directive, which gives the government flexibility in implementing this rule. Specifically, Romanian Law 119 of 1999, which amended the audio-visual Law 48/1992, provides: "TV stations must gradually broadcast, as much as possible, and by appropriate means, at least 51 percent of the total broadcast time to European

ROMANIA

productions, minus news and sport shows, games, advertising and teletext services.” The subsequent condition is that out of the total, at least 40 percent must be Romanian made. However, this is regarded by Romanian parliamentarians as more a theoretical concept – to make Romania’s legislation compatible with EU requirements – than a rule, because Romanian stations which complied with the requirement would dramatically lose market share and revenues.

The Ministry of Justice has submitted legislation to parliament requiring that foreign law firms must be associated with Romanian ones.

Romania introduced a new banking law in 1998 that opened its banking sector to foreign investors as it implemented its commitments under 1997 WTO Financial Services Agreement. Foreign insurance companies must establish a joint venture with a Romanian partner to enter the Romanian market. Administered insurance prices have tended to limit the interest of private companies in the Romanian market.

The government sold a strategic stake in the telephone company (Romtelecom) to Hellenic Telecommunications Organization in 1998; the privatization of Romtelecom is supposed to be completed after the year 2000. Tariffs are subject to governmental supervision. Romania has made commitments under the WTO Basic Telecommunications Agreement – many of which will be phased-in in 2003 – and has adopted the procompetitive regulatory principles contained in the WTO Reference Paper.

INVESTMENT BARRIERS

Since 1990, Romania’s stated policy has been to encourage foreign direct investment. In general, the debate within the coalition government is not over whether to promote a market economy that is open to foreign investment, but over how to achieve that objective. There remains resistance to foreign investment in some quarters,

including representatives of the nationalist political parties and from some managers of state-owned enterprises who fear that foreigners’ purchases of state-owned companies at “bargain basement” prices will give them too much influence in the economy.

A significant impediment to foreign investment is Romania’s unpredictable legal and regulatory system. Tax laws are changeable and unevenly enforced. Tort cases can require lengthy, expensive procedures and judges’ rulings face uncertain enforcement.

ELECTRONIC COMMERCE

As a result of millions of dollars worth of fraud on credit cards, many international electronic vendors no longer fill orders filed electronically from Romania.

OTHER BARRIERS

Bribery and corruption are widespread throughout the Romanian economy and tax administration. This is believed to have stimulated the growth in the informal economy, which currently amounts to about half of the nominal Gross Domestic Product. Factors contributing to the growth of the informal economy are well-known: over-regulation and bureaucracy; inconsistent and changing legislation, with immediate effect and subjective interpretation of law; and high taxation.

The Romanian Government not only has taken no action against practices of state-owned and private firms that restrict the sale of U.S. products and services, but has even in some instances encouraged such practices. In order to boost the resolution of some important arrears with the budget and other state-owned suppliers, the Ministry of Finance cut reschedule deals with state and private domestic debtors. In certain cases, this hidden subsidy has disadvantaged U.S. competitors. For instance, the Finance Ministry agreed to re-schedule in

ROMANIA

1998 tax arrears amounting to about \$200 million with the domestic firm “European Drinks”, an important domestic beverage manufacturer. This firm obtained a substantial cost advantage over its chief competitor, Coca Cola Romania (CCR), which received no concessions. CCR has experienced a steady decline in market share, while “European drinks” sales and share of the market have increased.